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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**THIRD APPELLATE DISTRICT**

(Sacramento)

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BEISSBARTH USA, INC.,

Plaintiff and Appellant,

v.

TIM MCGINNIS,

Defendant and Respondent.

C044717

(Super. Ct. No.  
03CS00466)

Plaintiff obtained a default judgment against defendant in Tennessee state court and then registered that judgment in the court below under the California Sister State Judgments Act (the Act) (Code Civ. Proc., § 1710.10 et seq.; subsequent unspecified statutory references are to the Code of Civil Procedure). Defendant then moved to vacate the California judgment, claiming the Tennessee judgment had been obtained due to *extrinsic mistake*. The trial court granted the motion, and plaintiff appeals. We conclude extrinsic mistake is not a valid defense to enforcement of a sister state judgment and reverse.

## FACTS AND PROCEEDINGS

Plaintiff Beissbarth USA, Inc., filed suit against defendant Tim McGinnis in Tennessee state court alleging breach of contract in connection with plaintiff's sale to defendant of "certain automotive diagnostic and/or repair equipment on open account" between September 16 and December 17, 1998. The complaint alleged the contractual relation between the parties was subject to the "'General conditions of sale and delivery,'" which provided that venue and jurisdiction shall be "in the location of the 'registered office' of Plaintiff." The registered office of plaintiff was alleged to be Nashville, Tennessee. The complaint further alleged defendant failed to pay for the equipment and there was a balance due of \$38,976.71, plus interest. Plaintiff sought an award of principal, interest and attorney fees.

The complaint was sent to defendant by "registered return receipt mail or certified return receipt mail" on February 21, 2002. Defendant signed the return receipt on March 19, 2002. Defendant hired Paige Hibbert to represent him in the action. Hibbert engaged in settlement negotiations with counsel for plaintiff, but to no avail. Neither defendant nor Hibbert filed a responsive pleading. Default judgment was entered against defendant on August 27, 2002 in the amount of \$92,411.44.

On March 18, 2003, plaintiff filed an application in the Superior Court for entry of judgment on a sister state judgment. The Clerk of Court entered judgment the same day.

On April 30, 2003, defendant filed a motion to set aside or vacate the judgment on the sister state judgment. Defendant claimed he did not owe plaintiff anything on the equipment because it had been received on consignment rather than purchase and remained unsold. Defendant claimed to be in possession of the inventory and to have continuously offered to return it to plaintiff.

The trial court granted the motion to vacate. The court concluded the default judgment had caught defense counsel by surprise because the parties had been in the process of negotiating a settlement. In its statement of decision, the court explained that defense counsel was prevented from presenting a defense in the Tennessee action due to "extrinsic mistake." Plaintiff appeals.

### DISCUSSION

Article IV, section 1 of the United States Constitution provides that "[f]ull faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state." "The purpose of the clause 'was to alter the status of the several states as independent foreign sovereignties, each free to ignore obligations created under the laws or by the judicial proceedings of the others, and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin.' (*Milwaukee County v. White Co.* (1935) 296 U.S. 268, 277 [56 S.Ct. 229, 234, 80 L.Ed.

220, 228].)" (*Bank of America v. Jennett* (1999) 77 Cal.App.4th 104, 113.) Under the full faith and credit clause, "[a] final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." (*Baker v. General Motors Corp.* (1998) 522 U.S. 222, 233 [139 L.Ed.2d 580, 592].)

In order to enforce a sister state judgment, it is first necessary to obtain a domestic judgment on it. (8 Witkin, Cal. Procedure (4th ed. 1997) Enforcement of Judgment, § 414, p. 418.) The California Legislature enacted the Act (§ 1710.10 et seq.) to provide an economical and expeditious means for doing so. (*Bank of America v. Jennett, supra*, 77 Cal.App.4th at p. 114.) A California judgment can be obtained simply by registering the sister state judgment with the superior court. (*Washoe Development Co. v. Guaranty Federal Bank* (1996) 47 Cal.App.4th 1518, 1521-1522.)

The Act also provides the exclusive means for attacking a judgment entered on a sister state judgment. (*Liquidator of Integrity Ins. Co. v. Hendrix* (1997) 54 Cal.App.4th 971, 973 (*Liquidator*).) Section 1710.40, subdivision (a) reads: "A judgment entered pursuant to this chapter may be vacated on any ground which would be a defense to an action in this state on the sister state judgment, including the ground that the amount of interest accrued on the sister state judgment and included in the judgment entered pursuant to this chapter is incorrect."

Although the Act does not elaborate regarding the defenses that may be asserted on a sister state judgment, the Law Revision Commission comments to section 1710.40 state: "Common defenses to enforcement of a sister state judgment include the following: the judgment is not final and unconditional (where finality means that no further action by the court rendering the judgment is necessary to resolve the matter litigated); the judgment was obtained by extrinsic fraud; the judgment was rendered in excess of jurisdiction; the judgment is not enforceable in the state of rendition; the plaintiff is guilty of misconduct; the judgment has already been paid; suit on the judgment is barred by the statute of limitations in the state where enforcement is sought." (Cal. Law Revision Com. com., 19A West's Ann. Code Civ. Proc. (1982 ed.) foll. § 1710.40, p. 694.)

Plaintiff contends the ground stated by the trial court for setting aside the judgment on the Tennessee judgment, extrinsic mistake, is not a valid defense to an action on that judgment. We agree.

In *Tsakos Shipping & Trading, S.A. v. Juniper Garden Town Homes, Ltd.* (1993) 12 Cal.App.4th 74 (*Tsakos*), the Court of Appeal stated that grounds for setting aside a sister state judgment include "extrinsic fraud or mistake in obtaining the judgment." (*Id.* at p. 94, italics added.) Citing section 473, the court concluded a sister state judgment may be set aside "on the ground of mistake, inadvertence, or excusable neglect . . . ." (*Tsakos, supra*, at p. 94.) Section 473, subdivision (b) reads in relevant part: "The court may, upon

any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. . . ."

In *Tsakos*, the managing general partner (Chabafy) of a limited partnership borrowed money from Tsakos after the partnership had dissolved but before it was wound up. Chabafy signed an indemnity agreement purporting to bind the partnership as guarantor. After Chabafy defaulted, Tsakos sued Chabafy and the partnership in New York state court, and Chabafy retained counsel to represent him and the partnership. Judgment was entered against all defendants. After Tsakos filed notice of entry of the New York judgment in California, the partnership filed a motion to vacate, which was denied.

The Court of Appeal reversed. The court concluded there was a conflict of interest between the defendants in the New York action that precluded dual representation. The court further concluded the partnership had a meritorious defense to the action on the guaranty agreement because the partnership had dissolved. However, the partnership was precluded from asserting that defense because the other partners had not received notice of the New York action. (*Tsakos, supra*, 12 Cal.App.3d at pp. 96-97.)

In this matter, the trial court granted defendant's motion to vacate on the basis of "extrinsic mistake." The court explained: "The parties were in constant negotiations, with Mr. Miller [plaintiff's counsel] and Mr. Hibbert discussing

settlement of the case. Mr. Hibbert believed the parties agreed to a settlement whereby Mr. McGinnis would return the property to Beissbarth. Mr. Hibbert was surprised to learn a default judgment had been entered against his client, especially since, as noted, he was led to believe a settlement was reached. . . . The evidence shows that due to extrinsic mistake McGinnis was prevented from presenting a defense to the Tennessee action." In reaching this conclusion, the trial court relied expressly on *Tsakos, supra*, 12 Cal.App.4th 74.

In *Liquidator, supra*, 54 Cal.App.4th 971, the Court of Appeal disagreed with *Tsakos* and declined to recognize section 473 as a valid basis for setting aside a sister state judgment. In that case, the defendant had moved to set aside a sister state judgment on the basis of excusable neglect because his hospitalization had prevented his attendance at the trial that resulted in the judgment. The trial court denied the motion, and the court of appeal affirmed. (*Liquidator, supra*, at pp. 973-974, 979.)

In arguing that excusable neglect was a valid basis for setting aside the sister state judgment, the plaintiff relied on *Tsakos*. The Court of Appeal found such reliance unwarranted. (*Liquidator, supra*, 54 Cal.App.4th at p. 977.) The court explained that *Tsakos* set forth a two-part procedure for setting aside a sister state judgment: "(1) the petitioner must demonstrate a meritorious defense such that a different result would follow if a new trial were granted in the sister state; and (2) there must be a procedural ground in California to

vacate the judgment.” (*Id.* at p. 978.) According to the *Liquidator* court, *Tsakos* found the procedural ground in section 473, whereas the only valid procedural ground lies in section 1710.40. (*Liquidator, supra*, at p. 978.)

The court also concluded section 473 does not provide a defense. The court explained: “Section 1710.40 requires the defendant to plead and prove a defense to the sister state judgment such as those enunciated by the Law Revision Commission in the comment to that section. Section 473, on the other hand, is not a defense but a procedural remedy for setting aside a default or a default judgment in California. It has nothing to do with sister state judgments. To allow sister state judgments to be collaterally attacked by section 473 would render the *full faith and credit* clause and section 1710.40 meaningless. If, for example, a party could file an attorney’s affidavit of fault under section 473, subdivision (b), the court would be required to set aside the judgment without proof that the defendant had any defense at all to the sister state judgment. Such a result would defeat the plain language of section 1710.40.”

(*Liquidator, supra*, 54 Cal.App.3d at p. 978.)

In *Washoe Development Co. v. Guaranty Federal Bank, supra*, 47 Cal.App.4th 1518, the Court of Appeal rejected a claim by the defendant that a judgment in California on a sister state judgment was barred because the judgment would have been precluded by the antideficiency statute had the original action been brought in this state. The court indicated this is not a valid defense to enforcement of the sister state judgment.



According to the court, the circumstances enumerated in section 1710.40 and the Law Revision Commission's comments thereto "are drafted so as to secure a judgment debtor the essentials of due process of law in the rendering state by ensuring notice and a reasonable opportunity to present every defense which under the law of the rendering state the judgment debtor is entitled to present." (*Id.* at p. 1523.)

In the present matter, defendant does not claim the Tennessee court lacked fundamental jurisdiction. Nor does he claim a denial of due process in connection with entry of the default judgment in Tennessee. Rather, defendant's claim is that he failed to file a responsive pleading because he was mistaken about whether a settlement had been reached. Defendant does not claim this mistake was caused by any fraudulent conduct by plaintiff.

"[T]he law is well established that upon a claim that a foreign judgment is not entitled to full faith and credit, the permissible scope of inquiry is limited to a determination of whether the court of forum had fundamental jurisdiction in the case. Accordingly, a judgment entered by one state must be recognized by another state if the state of rendition had jurisdiction over the parties and the subject matter and all interested parties were given reasonable notice and opportunity to be heard." (*World Wide Imports, Inc. v. Bartel* (1983) 145 Cal.App.3d 1006, 1010.)

The defense relied upon by the trial court, extrinsic mistake, may well be a valid basis for *the Tennessee state court*

to set aside the Tennessee judgment. However, on a motion to set aside a judgment on a sister state judgment, the question is not whether there is a valid basis for setting aside the judgment in the sister state but whether there is a valid basis for setting aside the domestic judgment. Section 1710.40 says a judgment may be set aside "on any ground which would be a defense to an action *in this state* on the sister state judgment." (Italics added.) As we have pointed out, extrinsic mistake is not a *defense* to an action in California and, thus, we are not concerned with whether there is a defense to the judgment in the sister state. This would be a matter for the sister state court to decide.

Defendant argues that, notwithstanding section 473, extrinsic mistake is a valid defense under section 1710.40. According to defendant, "[e]xtrinsic mistake has long been held, by California courts, to be a valid defense to an action in this state." However, none of the cases cited by defendant involve enforcement of a sister state judgment or concerns with full faith and credit. (See *Westphal v. Westphal* (1942) 20 Cal.2d 393; *Lennefelt v. Cranston* (1964) 231 Cal.App.2d 171.)

Assuming all the defenses identified by the Law Revision Commission may be asserted against enforcement of a sister state judgment notwithstanding the full faith and credit clause, extrinsic mistake is different in kind from those defenses. Extrinsic mistake does not involve a lack of fundamental jurisdiction. Nor does it involve any misconduct by the plaintiff making enforcement of the judgment in the plaintiff's

favor fundamentally unfair. Extrinsic mistake does not render a once valid judgment unenforceable because of lapse of time or payment in full.

In the present matter, there is some question whether defendant has even established a case of *extrinsic* mistake. "[M]istake is *extrinsic* when it deprives the unsuccessful party of an opportunity to present his case to the court." (*Westphal v. Westphal*, *supra*, 20 Cal.2d at p. 397, italics added.) Defendant's mistake appears to have been in failing to file a responsive pleading while undergoing settlement negotiations. Defendant may have believed it was unnecessary to file a responsive pleading, but he does not show how he was deprived of the opportunity to do so.

At any rate, as we have indicated, extrinsic mistake might be a valid basis for the Tennessee state court to set aside the default judgment. However, it is not a valid basis for the courts of this state to refuse to enforce that judgment. Until such time as defendant takes the necessary steps to have the Tennessee judgment vacated *in that state*, the judgment remains viable and subject to the full faith and credit clause. The trial court erred in granting the motion to vacate.

## DISPOSITION

The order granting defendant's motion to set aside the judgment on the sister state judgment is reversed and the matter is remanded to the trial court for entry of a new order denying the motion. Plaintiff is awarded costs on appeal.

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HULL, J.

We concur:

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BLEASE, Acting P.J.

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ROBIE, J.